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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,043	01/16/2004	Takayuki Matsui	1341.1171	6138

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EXAMINER

CONTINO, PAUL F

ART UNIT	PAPER NUMBER
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2114

DATE MAILED: 08/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/758,043	Applicant(s) MATSUI, TAKAYUKI	
	Examiner Paul Contino	Art Unit 2114	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claim 3 is objected to because of the following informalities: Line 2 would be more appropriate with “an” before “access”. Appropriate correction is required.
2. Claim 3 is objected to because of the following informalities: Line 6 includes a redundant use of the statement “relating to”. Appropriate correction is required.
3. Claim 4 is objected to because of the following informalities: Line 2 would be more appropriate with an “a” between “on” and “time”. Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 6, 8, and 9 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

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As in claims 6 and 8, the limitation of deciding lacks a concrete and tangible result and is interpreted as non-statutory. The Examiner recommends including a result pertaining to the decision step in order to overcome the non-statutory rejection.

As in claims 8 and 9, computer programs in and of themselves may not be patented.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The statement in lines 2-4 concerning “back-up data” being stored in a “back-up storage” based upon a time at which it was previously stored in the “back-up storage” is confusing and indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-2 and 4-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Ohran (U.S. Patent No. 6,085,298).

As in claim 1, Ohran discloses an alteration checking apparatus comprising:

a back-up unit that copies original data from an original data storage unit to a back-up data storage unit as back-up data (*column 11 lines 9-11 and 33-35*); and

an alteration deciding unit that, after copying of the original data as the back-up data is over, decides whether the original data has been altered based on a comparison between the original data and the back-up data (*column 10 line 66 through column 11 line 8*).

As in claim 2, Ohran discloses a list storing unit, wherein the alteration checking unit writes information in the list storing unit relating to original data that have been copied successfully as the back-up data and relating to original data that are decided to be not altered (*column 10 line 66 through column 11 line 8, column 13 lines 29-40, and column 14 lines 19-42*).

As in claim 4, Ohran discloses the back-up data are stored in the back-up storage unit based on [a] time at which the back-up data was stored in the back-up storage unit, the alteration checking apparatus further comprising:

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a restoration unit that restores original data when the alteration deciding unit decides that the original data has been altered, based on latest original data corresponding to the original data to be restored from the back-up storage unit (*column 10 line 66 through column 11 line 47*).

As in claim 5, Ohran discloses a request processing unit that denies access to the original data in the original data storage unit while [the] back-up unit is copying the original data (*column 11 lines 33-42, where the snapshot is interpreted as original data that may not be altered in order to preserve the instantaneous state of the original data during backup*) and that allows access to the original data in the original data storage unit while the alteration deciding unit is deciding whether the original data has been altered (*column 11 lines 9-14*).

As in claim 6, Ohran discloses A method of taking a back-up of original data and deciding whether the original data has been altered, comprising:

copying the original data as back-up data (*column 11 lines 9-11 and 33-35*); and

deciding, after the copying is over, whether the original data has been altered based on a comparison between the original data and the back-up data (*column 10 line 66 through column 11 line 8*).

As in claim 7, Ohran discloses denying access to the original data in the original data storage unit during the copying (*column 11 lines 33-42, where the snapshot is*

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interpreted as original data that may not be altered in order to preserve the instantaneous state of the original data during backup); and

allowing access to the original data in the original data storage unit during the deciding (*column 11 lines 9-14*).

As in claim 8, Ohran discloses a computer program containing instructions which when executed on a computer causes the computer to execute:

copying the original data as back-up data (*column 11 lines 9-11 and 33-35*); and

deciding, after the copying is over, whether the original data has been altered based on a comparison between the original data and the back-up data (*column 10 line 66 through column 11 line 8*).

As in claim 9, Ohran discloses denying access to the original data in the original data storage unit during the copying (*column 11 lines 33-42, where the snapshot is interpreted as original data that may not be altered in order to preserve the instantaneous state of the original data during backup*); and

allowing access to the original data in the original data storage unit during the deciding (*column 11 lines 9-14*).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ohran in view of Innan et al. (U.S. PGPub 2003/0088592).

As in claim 3, Ohran teaches determining if data has been altered. However, Ohran fails to teach of adding information related to data not altered to a list. Innan et al. teaches of a[n] access deciding unit that checks whether original data relating to an access request has been altered each time there is access request (*paragraph [0023]*), wherein

the alteration checking unit adds information to the information relating to relating to original data, in the list storing unit, that indicates that original data is not altered corresponding to original data that the access deciding unit decides as to be not altered (*Fig. 1 #s 25,26; paragraphs [0023], [0027], and [0029]*).

It would have been obvious to a person skilled in the art at the time the invention was made to have included the information addition as taught by Innan et al. in the invention of Ohran. This would have been obvious because the invention of Innan et al. minimizes the time and operational load necessary to backup and recover data in a system similar to that as taught by Ohran (*paragraphs [0006] and [0038]*).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

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U.S. PGPub 2005/0262174 Lohn et al. discloses file restoration.

U.S. Patent No. 6,073,220 Gunderson discloses data backup.

U.S. Patent No. 6,243,705 Kucala discloses data synchronization.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Contino whose telephone number is (571) 272-3657. The examiner can normally be reached on Monday-Friday 9:00 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PFC
8/15/2006


SCOTT BADERMAN
SUPERVISORY PATENT EXAMINER